



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 09971768

DATE: JULY 14, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a gelato coffee shop, seeks to employ the Beneficiary as a business analyst. It requests advanced degree professional classification for the Beneficiary under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage. We dismissed the Petitioner’s appeal, finding like the Director that the evidence did not establish the Petitioner’s ability to pay the proffered wage. The Petitioner filed a motion to reopen and a motion to reconsider which we likewise dismissed, concluding that the Petitioner did not show proper cause to reopen the proceeding or reconsider our prior decision.

The matter is now before us on another motion to reopen and reconsider. For the reasons discussed hereinafter, we will dismiss the combined motion.

I. ANALYSIS

As stated in our previous decision, a motion to reopen the proceeding must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In our previous decision we analyzed the documentary evidence submitted in support of the motion to reopen in conjunction with documentation already in the record and determined that the Petitioner had still not established its ability to pay the proffered wage from the priority date of the petition onward, as required by the regulation at 8 C.F.R. § 204.5(g)(2). We also analyzed the Petitioner’s claims in support of its motion to reconsider our previous decision that we did not properly interpret the evidentiary requirements in 8 C.F.R. § 204.5(g)(2), that we discounted the evidentiary weight of certain asset items cited by the Petitioner, and that we did not properly consider the totality of the Petitioner’s circumstances in accord with *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg’l Comm’r

1967). We concluded that the Petitioner had not established that our dismissal of the appeal was based on an incorrect application of law or policy.

In its current combined motion the Petitioner submits a brief that is virtually a verbatim copy of the brief it filed with its initial motion to reopen and reconsider. The Petitioner does not state any new facts and submits no new documentation. Therefore, the Petitioner has not shown proper cause to reopen this proceeding under 8 C.F.R. § 103.5(a)(2). Nor has the Petitioner established that our prior decision was based on any incorrect application of law or policy since the current motion repeats the arguments presented in the Petitioner's initial motion, contesting our dismissal of the appeal, which were thoroughly discussed in our prior decision. Therefore, the Petitioner has not shown proper cause to reconsider our prior decision under 8 C.F.R. § 103.5(a)(3).

II. CONCLUSION

The Petitioner has not shown proper cause for us to reopen the proceeding or reconsider our prior decision, in accordance with the requirements of 8 C.F.R. §103.5(a)(2) and (3).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.